

BRETT J. PRENDERGAST

Attorney at Law

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New Orleans, Louisiana 70119
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October 2, 2019

Ms. Stacie Joseph
Management Services Division
Department of City Civil Service
Suite 900
1340 Poydras Street
New Orleans, LA 70112

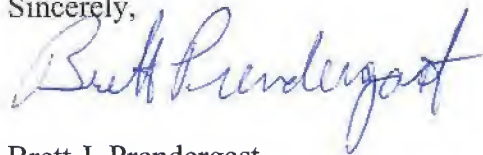
RE: Richella Maxwell

Dear Stacie:

Enclosed please find the original and five copies of a Motion for Summary Disposition which I request be placed on the docket for the next Commission meeting relative to the above referenced matter.

Thank you for your attention to this matter.

Sincerely,



Brett J. Prendergast

cc: Elizabeth Robins (via e-mail)

RECEIVED
CIVIL SERVICE DEPT
NEW ORLEANS
2019 OCT - 3 P 4: 24

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS
RICHELLA MAXWELL
VERSUS
DEPARTMENT OF SAFETY AND PERMITS
NO. 9087

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NEW ORLEANS
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MOTION FOR SUMMARY DISPOSITION
WITH REQUEST FOR ORAL ARGUMENT

NOW BEFORE THE COMMISSION, through undersigned counsel, comes the appellant, Richella Maxwell, who respectfully requests that the Commission rule summarily in appellant's favor pursuant to Rule II, Section 6.1(f) for the following reasons:

Section 6.1 (f) provides:

At any time after an appeal has been docketed, a written request may be filed by any interested party for summary disposition thereof on any of the following exclusive grounds:

....

- (f) that the written notice expressing the cause for the action complained against is insufficient; or that the cause as expressed does not constitute legal grounds for the disciplinary action.

The requirement for sufficient note for a disciplinary action comes from Art. 10 §8(A) of the Louisiana Constitution which provides:

(A) Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The

burden of proof on appeal, as to the facts, shall be on the appointing authority

Likewise, Rule IX, Section 1.3 of the Rules of this Commission provides:

In every case of termination, suspension, reduction in pay, letter of reprimand, or fine of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director a statement in writing of the reasons therefore. The notification also must advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

The Fourth Circuit has held that such notice should fully describe the conduct complained of, set forth the relevant date(s), place(s), etc., and name the witnesses against the employee to enable her to fully answer and prepare a defense. *Webb v. Department of Safety & Permits*, 543 So.2d 582 (La. App. 4 Cir. 1989), citing *Robbins v. New Orleans Public Library*, 208 So.2d 25 (La.App.4 Cir. 1968). These requirements have been applied to suspensions issued pending further discipline. See *Henderson v. Sewerage and Water Bd.*, 752 So.2d 252 (La. App. 4 Cir. 1999)

The above captioned appeal concerns two letters (one dated September 16, 2019 and one dated September 17, 2019) informing appellant of an emergency suspension. The letters are essentially the same with the exception that the September 16 purports to begin the suspension on September 16, 2019 continuing until March 27, 2020 while the September 17 letter begins the suspension on September 17, 2019 continuing until February 24, 2020. Additionally, the September 17 letter advises appellant of her right to appeal to this Commission while the September 16 letter fails to do so. The letters of suspension are attached hereto as exhibits.

Both letter offer only the following opening paragraph as cause for the suspension:

This letter is to give you formal written notice that you are being placed on one-hundred twenty (120) business days of emergency suspension without pay, beginning on Tuesday, September 17 2019¹ from your position of Management Development Specialist II (C0364). **This action is the result of an ongoing federal investigation into the illegal issuance of city permits within the Department of Safety and Permits.**

(Emphasis added).

An examination of the language of these letters reveals how precisely insufficient they are. The letters do not indicate that Ms. Maxwell illegally issued permits. In fact, they do not indicate that Ms. Maxwell did anything wrong. Rather, they merely indicate that there is an ongoing federal investigation into the topic. Furthermore, the letters fail to set forth any dates when Ms. Maxwell is alleged to have engaged in some unknown conduct for which she is now being suspended. Likewise, the letters do not specify where this unknown conduct occurred or who witnessed this conduct (whatever it is alleged to be). It is impossible for Ms. Maxwell to fully answer and prepare a defense to her suspension when she has been told practically nothing as to what **she** has allegedly done wrong.

Request for Oral Argument

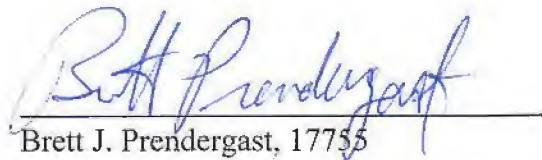
Pursuant to Rule II, Section 6.2, appellant requests that the Commission hear oral argument on this Motion at its next Commission meeting.

¹This date is from the September 17, 2019 letter. As noted above, the September 16, 2019 letter indicates a September 16 start date for the suspension.

Conclusion

For the reasons outlined above, the letters of suspension issued to appellant on September 16, 2019 and September 17, 2019 fail to provide sufficient notice and thus her appeal should be summarily upheld.

Respectfully submitted,



Brett J. Prendergast, 17755
4603 S. Carrollton Avenue
New Orleans, Louisiana 70119
(504) 593-9277

CHIEF ADMINISTRATIVE OFFICE
CITY OF NEW ORLEANS

LaTOYA CANTRELL
MAYOR

GILBERT A. MONTAÑO
CHIEF ADMINISTRATIVE OFFICER

September 16, 2019

NOTIFICATION OF EMERGENCY SUSPENSION

VIA US POSTAL CERTIFIED MAIL
ITEM No. 7009 0080 0000 1426 5682

Ms. Richella Maxwell

Richella Maxwell

Dear Ms. Maxwell:

This letter is to give you formal written notice that you are being placed on one-hundred twenty (120) calendar days of emergency suspension without pay, beginning today September 16, 2019, from your position of Management Development Specialist II (C0364). This action is the result of an ongoing federal investigation into the illegal issuance of city permits within the Department of Safety & Permits.

Pending the conclusion of this investigation, the suspension is effective from today, September 16, 2019 through Friday, March 27, 2020. This action is hereby taken, but is not limited to suspension and may include a Pre-Termination hearing. A Pre-termination Hearing would be required in accordance with Civil Service Rule IX, Section 1.2, to provide you with an opportunity to respond to the allegations. The rule states, "In every case of employment termination of a regular employee, the appointing authority shall conduct a pre-termination hearing as required by law and shall notify the employee of the disciplinary action being recommended prior to taking the action."

Should a hearing be determined to be necessary, you will have said opportunity to respond. You may have counsel or a representative attend the pre-termination hearing; however, they are present only to advise you and may not question witnesses (including you) or present any evidence. You may provide testimony, call witnesses, and produce any documents you wish the department to consider.

All access cards, devices and equipment must be returned to the Safety and Permits Department's Human Resources Manager, Sinead Daniell. You may contact the Benefits Administration

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Division of the Chief Administration at (504) 658-8615, to arrange direct payment of healthcare premiums to avoid any interruption of healthcare benefits.

Should you have any questions, you may contact the CAO Division of Personnel & Training at (504) 658-8600.

Sincerely,

A handwritten signature in dark ink, appearing to read 'G. Montano', followed by a long horizontal line extending to the right.

Gilbert A. Montano
Chief Administrative Office

Cc: Civil Service Department
City Attorney's Office
Chief Administrative Office
Employee Personnel File

CHIEF ADMINISTRATIVE OFFICE
CITY OF NEW ORLEANS

GILBERT A. MONTAÑO
CHIEF ADMINISTRATIVE OFFICER

LA TOYA CANTRELL
MAYOR

September 17, 2019

NOTIFICATION OF EMERGENCY SUSPENSION

VIA US POSTAL CERTIFIED MAIL
ITEM No. 7009 0080 0000 1426 5828

Ms. Richella Maxwell
[REDACTED]

Dear Ms. Maxwell:

This letter is to give you formal written notice that you are being placed on one-hundred twenty (120) business days of emergency suspension without pay, beginning on Tuesday, September 17, 2019 from your position of Management Development Specialist II (C0364). This action is the result of an ongoing federal investigation into the illegal issuance of city permits within the Department of Safety & Permits.

Pending the conclusion of this investigation, the suspension is effective September 17, 2019 through Monday, February 24, 2020. This action is hereby taken, but is not limited to suspension and may include a Pre-Termination hearing. A Pre-termination Hearing would be required in accordance with Civil Service Rule IX, Section 1.2, to provide you with an opportunity to respond to the allegations. The rule states, "In every case of employment termination of a regular employee, the appointing authority shall conduct a pre-termination hearing as required by law and shall notify the employee of the disciplinary action being recommended prior to taking the action."

Should a hearing be determined to be necessary, you will have said opportunity to respond. You may have counsel or a representative attend the pre-termination hearing; however, they are present only to advise you and may not question witnesses (including you) or present any evidence. You may provide testimony, call witnesses, and produce any documents you wish the department to consider.

Pursuant to the Civil Service Rule IX, Maintaining Standards of Service, Section 1.3 and 1.4, you may have the right to appeal this action. This appeal must be in writing and submitted to the Director of Personnel, Civil Service within thirty (30) days of the date of this letter.

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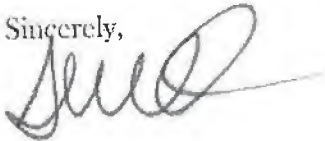


You may contact the Chief Administrative Office Benefits Division to arrange the continuation of health care benefits.

Please be advised that your access entry card has been received and all other accesses have been deactivated.

Should you have any questions, you may contact the CAO Division of Personnel & Training at (504) 658-8600.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Gilbert A. Montano', written over a light gray circular stamp.

Gilbert A. Montano
Chief Administrative Office

Cc: Civil Service Department
City Attorney's Office
Chief Administrative Office
Employee Personnel File